

105TH CONGRESS
1ST SESSION

H. R. 2330

To authorize the Secretary of Transportation to make direct loans and provide lines of credit to finance surface transportation projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1997

Ms. DELAURO (for herself, Mr. GREEN, Mr. KENNEDY of Rhode Island, Mr. FORD, Mr. BONIOR, Mr. FROST, Mr. OLVER, Ms. CHRISTIAN-GREEN, Mr. MCGOVERN, and Ms. PELOSI) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To authorize the Secretary of Transportation to make direct loans and provide lines of credit to finance surface transportation projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transportation Infra-
5 structure Credit Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The economic vitality of the Nation and the
2 quality of life of its citizens depend upon continued
3 investment in surface transportation infrastructure
4 for the movement of both people and goods.

5 (2) The Nation's needs for additional infra-
6 structure investment in both rural and urban areas
7 exceed available resources under traditional pro-
8 grams.

9 (3) While recent Federal initiatives have
10 equipped States with new financing tools, large in-
11 frastructure projects of national significance cannot
12 be adequately funded through existing programs and
13 require new forms of assistance.

14 (4) A capital investment program for construct-
15 ing, reconstructing, and expanding infrastructure
16 will create both direct and indirect jobs.

17 (5) Improved surface access to seaports and
18 airports through investing in intermodal facilities
19 and developing trade corridors will stimulate exports
20 and enhance the Nation's competitiveness in the
21 world economy.

22 (6) Fostering public-private partnerships will
23 attract private capital and advance necessary
24 projects through the development stage.

1 **SEC. 3. DEFINITIONS.**

2 In this Act, the following definitions apply:

3 (1) **DIRECT LOAN.**—The term “direct loan”
4 means any loan, line of credit, or other similar Fed-
5 eral credit assistance provided to an obligor in con-
6 nection with the financing of a project under section
7 5 or 6.

8 (2) **ELIGIBLE PROJECT COST.**—The term “eligi-
9 ble project cost” means all amounts paid by or for
10 the account of an obligor or insured in connection
11 with a project, including—

12 (A) development phase activities, including
13 planning, feasibility analysis, environmental re-
14 view, permitting, preliminary engineering and
15 design work, and other preconstruction activi-
16 ties;

17 (B) construction, reconstruction, rehabili-
18 tation, replacement, and acquisition of real
19 property, and the acquisition of equipment; and

20 (C) interest during construction, reason-
21 ably required reserve funds, and issuance ex-
22 penses.

23 (3) **FEDERAL CREDIT INSTRUMENT.**—The term
24 “Federal credit instrument” means a direct loan,
25 loan guarantee, or line of credit authorized to be

1 made available under this Act with respect to a
2 project.

3 (4) INSURED.—The term “insured” means any
4 party that is the beneficiary of project development
5 cost insurance under section 7, whether a corpora-
6 tion, partnership, joint venture, trust, or govern-
7 mental entity or instrumentality, except that if such
8 entity is not a State or local government or any
9 agency thereof, the project it is undertaking shall be
10 publicly sponsored, as provided in paragraphs (1)
11 and (2) of section 4(a).

12 (5) LENDER.—The term “lender” means any
13 non-Federal qualified institutional buyer (as defined
14 in section 230.144A(a) of title 17, Code of Federal
15 Regulations (or any successor regulation), known as
16 rule 144(a) of the Securities and Exchange Commis-
17 sion and issued under the Securities Act of 1933 (15
18 U.S.C. 77a et seq.)), including—

19 (A) a qualified retirement plan (as defined
20 in section 4974(c) of the Internal Revenue Code
21 of 1986) that is a qualified institutional buyer;
22 and

23 (B) a governmental plan (as defined in
24 section 414(d) of the Internal Revenue Code of
25 1986) that is a qualified institutional buyer.

1 (6) LINE OF CREDIT.—The term “line of cred-
2 it” means a commitment by the Secretary to make
3 1 or more direct loans at future dates subject to the
4 occurrence of certain events.

5 (7) LOAN GUARANTEE.—The term “loan guar-
6 antee” means any guarantee or other pledge by the
7 Secretary to pay all or a part of the principal of and
8 interest on a loan or other debt obligation issued by
9 an obligor and funded by a lender.

10 (8) LOCAL SERVICER.—The term “local
11 servicer” means a State infrastructure bank estab-
12 lished under section 350 of the National Highway
13 System Designation Act of 1995 (109 Stat. 618), or
14 a State or local government or any agency thereof
15 that is responsible for servicing a direct loan on be-
16 half of the Secretary.

17 (9) OBLIGOR.—The term “obligor” means any
18 party primarily liable for payment of the principal of
19 or interest on any direct loan made under section 5
20 or 6, whether a corporation, partnership, joint ven-
21 ture, trust, or governmental entity or instrumental-
22 ity, except that if such entity is not a State or local
23 government or any agency thereof, the project it is
24 undertaking shall be publicly sponsored, as provided
25 in paragraphs (1) and (2) of section 4(a).

1 (10) PROJECT.—The term “project” means any
2 surface transportation facility eligible for Federal as-
3 sistance under title 23 or chapter 53 of title 49,
4 United States Code.

5 (11) PROJECT OBLIGATION.—The term
6 “project obligation” means any note, bond, debenture,
7 or other evidence of indebtedness issued by an
8 obligor in connection with the financing of a project
9 other than a direct loan provided under this Act.

10 (12) SECRETARY.—The term “Secretary”
11 means the Secretary of Transportation.

12 (13) STATE.—The term “State” shall have the
13 meaning such term has in section 101 of title 23,
14 United States Code.

15 (14) SUBSTANTIAL COMPLETION.—The term
16 “substantial completion” means the time at which a
17 project opens to vehicular, passenger, or freight traf-
18 fic.

19 **SEC. 4. DETERMINATION OF ELIGIBILITY AND PROJECT SE-**
20 **LECTION.**

21 (a) ELIGIBILITY.—For a project to receive financial
22 assistance under this Act, it must meet the following cri-
23 teria:

24 (1) The project shall satisfy the applicable
25 statewide planning requirements of section 135 of

1 title 23, United States Code, and the metropolitan
2 planning requirements of section 134 of title 23,
3 United States Code, at the time any loan or insur-
4 ance agreement is entered into under this Act.

5 (2) The project application shall be submitted
6 to the Secretary by a State or a local servicer.

7 (3) Eligible project costs must equal or exceed
8 the lesser of \$100,000,000 or 50 percent of the most
9 recent annual amount of Federal-aid highway funds
10 apportioned under title 23, United States Code, to
11 the State in which the project is located.

12 (4) Project financing shall be payable in whole
13 or in part by user charges or other dedicated reve-
14 nue sources.

15 (b) SELECTION AMONG ELIGIBLE PROJECTS.—The
16 Secretary shall establish criteria for selecting among
17 projects that meet the eligibility criteria of subsection (a).
18 Such selection criteria shall include—

19 (1) the extent to which the project is nationally
20 significant, including the extent to which the project
21 will transport passengers or freight at lower costs or
22 higher efficiency, will advance multistate corridors,
23 or will otherwise promote metropolitan, regional,
24 interstate, or international commerce;

25 (2) the creditworthiness of the project;

1 (3) the extent to which assistance under this
2 Act would foster innovative public-private partner-
3 ships and attract private debt or equity investment;

4 (4) the likelihood that assistance under this Act
5 would enable the project to proceed at an earlier
6 date than would be the case otherwise; and

7 (5) the amount of budget authority required to
8 fund the direct loan or project development cost in-
9 surance provided under this Act.

10 (c) **FEDERAL REQUIREMENTS.**—All requirements of
11 titles 23 and 49, United States Code, shall apply to funds
12 made available under this Act and projects assisted with
13 such funds unless the Secretary determines that any such
14 requirement, other than section 113 of title 23, United
15 States Code, is inconsistent with any provision of this Act.
16 Nothing in this subsection shall affect any responsibility
17 or obligation of the Secretary under any other Federal
18 law, including the National Environmental Policy Act of
19 1969 (42 U.S.C. 4321 et seq.), title VI of the Civil Rights
20 Act of 1964 (42 U.S.C. 2000d et seq.), and the Uniform
21 Relocation Assistance and Real Property Acquisition Poli-
22 cies Act of 1970 (42 U.S.C. 4601 et seq.).

23 **SEC. 5. FLEXIBLE PAYMENT LOANS.**

24 (a) **IN GENERAL.**—The Secretary is authorized to
25 enter into agreements with 1 or more obligors to make

1 direct loans pursuant to the Federal Credit Reform Act
2 of 1990 the proceeds of which are used either to finance
3 eligible project costs or refinance interim construction fi-
4 nancing of such costs of any project selected under section
5 4, except that no loan agreement shall refinance interim
6 construction financing later than 1 year after substantial
7 completion of construction.

8 (b) TERMS AND LIMITATIONS.—

9 (1) A loan agreement under this section shall
10 be on such terms and conditions and contain such
11 covenants, representations, warranties, and require-
12 ments (including requirements for audits) as the
13 Secretary determines.

14 (2) A direct loan shall have a lien on project
15 revenues or other dedicated revenue sources, and
16 may be subject to prior liens securing project obliga-
17 tions; however, any Federal claim on project assets
18 shall not be subordinated to the claims of other lend-
19 ers in the event of default by the obligor.

20 (3) The Secretary shall not make a direct loan
21 exceeding 33 percent of eligible project costs.

22 (4) The final maturity date of a direct loan
23 shall not exceed 30 years from the date of substan-
24 tial completion.

1 (5) The interest rate on a direct loan shall
2 equal the yield on marketable United States Treas-
3 ury securities with a similar maturity to that of such
4 direct loan on the date of execution of the loan
5 agreement.

6 (c) REPAYMENT.—Loan repayments on a direct loan
7 must commence not later than 5 years after substantial
8 completion of the project and shall be payable not less fre-
9 quently than semiannually. In the event that, in the first
10 10 years following substantial completion, the project
11 (after paying operation and maintenance costs or debt
12 service on any project obligations senior to the direct loan)
13 is unable to generate sufficient revenues to pay scheduled
14 principal and interest, the Secretary may allow the obligor
15 to add unpaid principal and interest to the outstanding
16 balance of the direct loan, if the obligor demonstrates that
17 it is using due diligence to increase revenues or decrease
18 costs so as to become current in its payments.

19 (d) LOAN GUARANTEES.—

20 (1) IN GENERAL.—The Secretary may provide a
21 loan guarantee to a lender in lieu of making a direct
22 loan.

23 (2) TERMS.—The terms of a guaranteed loan
24 shall be consistent with those set forth in this sec-
25 tion for a direct loan, except that the rate on the

1 guaranteed loan and any prepayment features shall
2 be negotiated between the obligor and the lender,
3 with the consent of the Secretary.

4 **SEC. 6. STANDBY LINES OF CREDIT.**

5 (a) IN GENERAL.—The Secretary is authorized to
6 enter into agreements with 1 or more obligors to make
7 direct loans pursuant to the Federal Credit Reform Act
8 of 1990 at future dates in the form of lines of credit for
9 any project selected under section 4. The proceeds of a
10 line of credit provided under this section shall be available
11 to pay debt service on project obligations issued to finance
12 eligible project costs.

13 (b) TERMS AND LIMITATIONS.—A line of credit pro-
14 vided under this section shall be subject to the following
15 conditions:

16 (1) A line of credit under this section shall be
17 on such terms and conditions and contain such cov-
18 enants, representations, warranties, and require-
19 ments (including requirements for audits), as the
20 Secretary determines.

21 (2) A draw on a line of credit shall only be
22 made if net revenues from the project (including
23 capitalized interest, any debt service reserve fund, or
24 any other available reserves) are insufficient to pay
25 debt service on project obligations.

1 (3) A line of credit shall be available during the
2 period beginning on the date of substantial comple-
3 tion and ending no later than the day that is 10
4 years following such date.

5 (4) The total amount of a line of credit shall
6 not exceed 33 percent of eligible project costs, and
7 the amount drawn in any single year shall not ex-
8 ceed 20 percent of the total amount of the line of
9 credit.

10 (5) Any draw on a line of credit under this sec-
11 tion shall represent a direct loan as defined in the
12 Federal Credit Reform Act of 1990 and shall be re-
13 paid within 30 years from the date of such draw.

14 (6) The interest rate on a draw shall equal the
15 yield on 30-year marketable United States Treasury
16 securities as of the date the line of credit is commit-
17 ted.

18 (7) No third party creditor of the obligor shall
19 have any right against the Federal Government with
20 respect to any draw on a line of credit.

21 (8) A line of credit shall not be issued for a
22 project that is also the recipient of a flexible pay-
23 ment loan under section 5.

24 (c) REPAYMENT.—Loan repayments shall commence
25 within 5 years of a draw and shall be payable not less

1 frequently than semi-annually. The direct loan evidencing
2 the draw shall have a lien on project revenues or other
3 dedicated revenue sources, and may be subject to prior
4 liens securing project obligation; however, any Federal
5 claim on project assets shall not be subordinated to the
6 claims of other lenders in the event of default by the obli-
7 gor. In the event that, in the first 10 years following sub-
8 stantial completion, the project (after paying operation
9 and maintenance costs or any debt service on project obli-
10 gations senior to the draw) is unable to generate sufficient
11 revenues to pay scheduled principal and interest, the Sec-
12 retary may allow the obligor to add unpaid principal and
13 interest to the outstanding balance of the draw, if the obli-
14 gor demonstrates that it is using due diligence to increase
15 revenues or decrease costs so as to become current in its
16 payments. Unpaid interest or principal shall continue to
17 accrue interest until the next payment date.

18 **SEC. 7. PROJECT DEVELOPMENT COST INSURANCE PILOT**
19 **PROGRAM.**

20 (a) IN GENERAL.—The Secretary may establish a
21 pilot program to encourage public-private partnerships
22 and facilitate infrastructure development by entering into
23 agreements with 1 or more insureds to provide insurance
24 for preconstruction costs associated with any project se-
25 lected under section 4. Such program shall be designed

1 to efficiently and equitably allocate risks and responsibil-
2 ities among governmental sponsors and private developers
3 of projects anticipated to be supported in whole or in part
4 by user charges or other dedicated revenue sources. Such
5 program shall provide insurance for the noncommercial
6 risks and other preconstruction costs, as defined in section
7 3(2)(A).

8 (b) TERMS AND SCOPE OF COVERAGE.—The insur-
9 ance provided under this section may cover
10 preconstruction costs incurred by an insured for a project
11 selected under section 4 that will not proceed to construc-
12 tion due to inability to secure governmental permits and
13 approvals, challenges to such permits and approvals,
14 events of force majeure, or other factors, as determined
15 by the Secretary, in accordance with the following terms:

16 (1) The Federal share of any insurance pro-
17 vided under this section shall not exceed 40 percent
18 of the project costs included in section 3(2)(A). Such
19 costs must be incurred subsequent to the date of is-
20 suance of the insurance. In no case may the Federal
21 share exceed \$4,000,000.

22 (2) The State or local government share of any
23 insurance provided under this section shall equal at
24 least 20 percent of the project costs included in sec-

1 tion 3(2)(A), unless the Secretary determines other-
2 wise.

3 (3) The Secretary may impose such other con-
4 ditions and requirements in connection with any in-
5 surance provided under this section as the Secretary
6 deems appropriate, including requirements for au-
7 dits.

8 (c) PAYMENT OF CLAIMS AND REIMBURSEMENT.—
9 Upon determining that a project insured under this sec-
10 tion will not proceed to construction within 5 years from
11 the date of issuance of the insurance, the Secretary shall
12 pay the insured the Federal share of the insurance. The
13 Secretary may require the insured to reimburse the Sec-
14 retary for any proceeds paid under this section if the
15 project later proceeds to construction.

16 (d) INSURANCE FEES.—The Secretary may charge
17 such fees and obtain other compensation for providing in-
18 surance coverage under this section as the Secretary
19 deems appropriate, payable upon execution of the insur-
20 ance agreement. Such fees and compensation shall be de-
21 posited into the Highway Trust Fund (other than the
22 Mass Transit Account).

23 **SEC. 8. PROJECT SERVICING.**

24 The State in which a project receiving financial as-
25 sistance under this Act is located shall identify a local

1 servicer to assist the Secretary in servicing the direct loan
2 or insurance provided under this Act. Such local servicer
3 shall act as the agent for the Secretary, and may receive
4 a servicing fee, subject to approval by the Secretary. Such
5 local servicer shall not be liable for the obligations of the
6 obligor to the Secretary.

7 **SEC. 9. OFFICE OF INFRASTRUCTURE FINANCE.**

8 (a) DUTIES OF THE SECRETARY.—Section 301 of
9 title 49, United States Code, is amended—

10 (1) in paragraph (7), by striking “and” at the
11 end;

12 (2) in paragraph (8), by striking the period at
13 the end and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(9) develop and coordinate Federal policy on
16 financing transportation infrastructure, including
17 the provision of direct Federal credit assistance and
18 other techniques used to leverage Federal transpor-
19 tation funds.”.

20 (b) OFFICE OF INFRASTRUCTURE FINANCE.—

21 (1) IN GENERAL.—Chapter 1 of title 49, United
22 States Code, is amended by adding at the end the
23 following:

1 **“§ 113. Office of Infrastructure Finance**

2 “(a) ESTABLISHMENT.—The Secretary of Transpor-
3 tation shall establish within the Office of the Secretary
4 an Office of Infrastructure Finance.

5 “(b) DIRECTOR.—The Office shall be headed by a Di-
6 rector who shall be appointed by the Secretary not later
7 than 180 days after the date of enactment of this section.

8 “(c) FUNCTIONS.—The Director shall be responsible
9 for—

10 “(1) carrying out the responsibilities of the Sec-
11 retary described in section 301(9);

12 “(2) carrying out research on financing trans-
13 portation infrastructure, including educational pro-
14 grams at a designated academic center and other
15 initiatives to support Federal, State, and local gov-
16 ernment efforts; and

17 “(3) providing technical assistance to Federal,
18 State, and local government agencies and officials to
19 facilitate the development and use of alternative
20 techniques for financing transportation infrastruc-
21 ture.”.

22 (2) CONFORMING AMENDMENT.—The analysis
23 for chapter 1 of title 49, United States Code, is
24 amended by adding at the end the following:

“113. Office of Infrastructure Finance.”.

1 **SEC. 10. RULES AND REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations as deemed necessary or appropriate to carry
4 out the purposes and provisions of this Act.

5 **SEC. 11. STATE AND LOCAL PERMITS.**

6 The provision of financial assistance under this Act
7 shall not—

8 (1) relieve any recipient of such assistance of
9 any obligation to obtain any required State or local
10 permits and approvals;

11 (2) limit the right of any State or local govern-
12 mental unit to approve or regulate rates of return on
13 private equity invested in a project; or

14 (3) otherwise supersede any State or local law
15 or regulation applicable to the construction or oper-
16 ation of such project.

17 **SEC. 12. FUNDING.**

18 (a) DETERMINATION OF BUDGET AUTHORITY.—The
19 Secretary shall estimate the budget authority associated
20 with providing financial assistance to projects under this
21 Act utilizing credit models of 1 or more independent, na-
22 tionally-recognized rating agencies.

23 (b) USE OF UNOBLIGATED BALANCES.—Notwith-
24 standing any limitation on obligations for Federal-aid
25 highways and highway safety construction programs, a
26 State may obligate in a fiscal year the unobligated bal-

ances of funds apportioned to the State in the preceding
 3 fiscal years under section 104(b)(1), 104(b)(2),
 104(b)(3), 104(b)(5)(B), 144, or 160 of title 23, United
 States Code, or funds allocated to the State in the preced-
 ing 3 fiscal years under section 157 of such title or section
 1013(c) or 1015 of the Intermodal Surface Transportation
 Efficiency Act of 1991, for the budget costs of providing
 financial assistance under this Act, as estimated by the
 Secretary under subsection (a).

(c) REESTIMATES OF BUDGET COSTS.—Any reesti-
 mates of costs resulting in increases in budget authority
 necessary to fund the financial assistance provided under
 this Act shall be funded from the General Fund of the
 Treasury.

(d) LIMITATIONS ON OBLIGATIONS.—

(1) IN GENERAL.—Obligations authorized
 under subsection (b) of this section to fund esti-
 mated budget costs shall be limited to \$100,000,000
 for each of fiscal years 1998 through 2003.

(2) BUDGET COSTS OF INSURANCE.—Not more
 than 10 percent of the obligational authority made
 available annually under this section shall be used to
 fund the budget costs of insurance under section 7
 of this Act.

1 (e) LIMITATIONS ON CREDIT AMOUNTS.—Principal
2 amounts of Federal credit instruments and the Federal
3 share of insurance coverage provided under this Act shall
4 not exceed \$2,000,000,000 for each of fiscal years 1998
5 through 2003.

6 (f) SPECIAL RULE FOR URBANIZED AREAS.—Funds
7 apportioned or allocated under section 104(b)(2),
8 104(b)(3), or 160 of title 23, United States Code, or under
9 section 1013(c) or 1015 of the Intermodal Surface Trans-
10 portation Efficiency Act of 1991, and attributed to an ur-
11 banized area with a population of over 200,000 under sec-
12 tion 133(d)(2) of such title, may be obligated for the budg-
13 et costs of projects receiving financial assistance under
14 this title only if the metropolitan planning organization
15 designated for such urbanized area concurs, in writing,
16 with such obligation.

17 **SEC. 13. REPORT TO CONGRESS.**

18 Not later than 5 years after the date of the enact-
19 ment of this Act, the Secretary shall transmit to Congress
20 a report on the benefits, if any, of transferring the oper-
21 ation of the programs established by this Act to a Govern-
22 ment corporation or other Government-sponsored enter-
23 prise.

○